

MINUTES
BOARD OF SUPERVISORS
COUNTY OF YORK

Adjourned Meeting
November 15, 2000

6:30 p.m.

Meeting Convened. An Adjourned Meeting of the York County Board of Supervisors was called to order at 6:32 p.m., Wednesday, November 15, 2000, in the East Room, York Hall, by Chairman Walter C. Zaremba.

Attendance. The following members of the Board of Supervisors were present: Walter C. Zaremba, Sheila S. Noll, Donald E. Wiggins, James S. Burgett, and Melanie L. Rapp.

Also in attendance were Daniel M. Stuck, County Administrator; and James E. Barnett, County Attorney.

Meeting Recessed. At 6:32 p.m. Chairman Zaremba declared a short recess in order to reconvened the meeting in the Board Room, York Hall, to accommodate seating for the number of attendees present for the meeting.

Meeting Reconvened. At 6:37 p.m. the meeting was reconvened by order of the Chair in the Board Room of York Hall.

WORK SESSION

SITE PLAN SUBMITTAL FOR THE DARE MARINA EXPANSION

Chairman Zaremba explained that the meeting had to be convened in the East Room as advertised, but had been moved upstairs to the Board Room so that the large number of people attending this meeting due to the Dare Marina discussion would have seats. He indicated the staff would be making a brief presentation on the proposed expansion project, and then the marina owners and others in attendance would be given an opportunity to speak.

Mr. J. Mark Carter, Assistant to the County Administrator, explained the proposal submitted to the County and presented the facts as the County staff knew them and attempted to clarify some misunderstandings regarding the proposal. He displayed for the Board members area photographs and provided a brief history of the area's zoning. Mr. Carter explained the current operation of the Dare Marina and the proposed expansion, providing a breakdown on the square footage for storage, retail use, office building, living quarters, and eating facility. He also indicated the applicants were proposing 190 parking spaces. Staff has forwarded comments to the applicants regarding the proposal, and Mr. Carter stated the proposal has not been approved by the County at this time. He then briefed the Board on the issues that the applicants must address which included Chesapeake Bay water quality issues, the transitional buffer requirements, the traffic impact analysis, and off-street parking. He spoke regarding the use standards, stating a marina is permitted as a matter of right in the WCI zoning district, and that an eating facility is permitted as long as it is an accessory, subordinate, and incidental use to the marina. The eating facility could in no way ever become a nightclub or have a dance floor. Mr. Carter then spoke concerning the factors used to determine

November 15, 2000

whether or not an eating facility was accessory, subordinate, and incidental which included the size of the facility, the hours of operation, its location, and how it was to be identified. He displayed an artist's rendering of the proposed facility, stating the current proposal is for a 100-seat eating facility (in and outdoors) with a 1,650 square foot dining area and a 675 square foot kitchen. He noted that the proposal also contained additional space in the building for additional facilities associated with the marina. Mr. Carter then provided the Board members with a comparison done with other marinas which indicated the Dare Marina would be on the low side for dining seats in ratio to boat slips.

Discussion followed regarding concern by the area residents that the general public would be able to use the eating facility, thereby turning it into a restaurant which is not permitted.

Mr. Carter reiterated that the plan has not been approved, that there are issues that must be satisfactorily addressed.

Mr. Burgett indicated he understood that normally this type of application would be handled by the staff, but asked if the Board could do something about it if the permitted use would have an adverse impact on the community.

Mr. Barnett stated the Board has a zoning ordinance in place that allows a marina by right in the current zoning district. He stated the Board could amend the ordinance to prevent or restrict this type of use, but the amendment could not be made retroactive to this particular proposal. Mr. Barnett stated he felt the Board's ordinance held many protections in the standards that were included in the ordinance.

Mr. Wiggins asked if the staff's interpretation of the standards was that the eating facility would be restricted to the people who have boats at the marina and their guests.

Mr. Carter stated the primary intent of the applicants' eating facility must be to serve those people who have boats at the marina, but there is no requirement that users must show a membership card at the door. He stated staff was trying to find other ways to meet that void in the requirement such as addressing the advertising and identification of the facility on the road. There is no requirement to limit the facility only to marina patrons or their guests, but the accommodation to the patrons and their guests must be the primary reason for the eating establishment.

Mrs. Noll asked about permitted signage.

Mr. Carter indicated the facility was entitled to have an identification sign at the road, and its size is limited. The marina operator has been informed that the eating facility cannot be shown predominately on the sign. There is no off-site signage permitted for a commercial use unless billboard space is purchased; but, again, the eating facility reference would have to be subordinate to advertising the marina itself.

Chairman Zaremba stated he has a problem in reconciling the fact that there can be no restaurant in the WCI district at any time, but the ordinance allows an eating facility for the patrons of the marina. He asked how the County can keep the facility from becoming a public place to eat.

Mr. Carter indicated the staff plans to address that issue through size limitations, advertising limitations, and linking hours of operation to the operation of the marina. Staff does not interpret the County's ordinance as giving staff the authority to require a membership factor.

The primary intention of the facility must be to provide a service to the marina patrons. Mr. Carter stated that the applicant's want to include the eating facility to be competitive with marinas up and down the Bay that have an eating facility to attract the transient boaters.

Chairman Zaremba asked about the marinas that were surveyed and if the ordinances of the localities of those establishments were checked to see if they allowed restaurants.

Mr. Carter stated the localities' requirements were checked, and the requirements were different across the board. The localities handled the situation in many different ways.

Chairman Zaremba indicated the only reason a special use permit was not required in this particular case was because the use as proposed is consistent with the County's ordinances. He asked if someone wanted to do something that was contrary to the zoning ordinance, couldn't they come before the Board with an application for a special use permit.

Mr. Carter clarified by stating that certain zoning districts have special uses requiring an extra level of review and are permitted only if approved by the Board through a special use permit. An individual may apply for a special use permit only if the use is allowed as a special use as contained in the Zoning Ordinance tables of uses. If a use is not listed as a permitted or special use, it simply can't be considered.

Chairman Zaremba then opened the floor to receive public comment.

Mr. Pat Milmos, one of the Dare Marina owners, indicated that the Dare Marina was trying to be first-class neighbors, and felt that the expansion proposal was a first-class design. He stated the marina runs a very good operation, but there has been a lot of misinformation about the expansion proposal. He stated there was no intent to cater to a bar crowd, but only to service the marina patrons while they were using the facility.

Mr. Hugh Delany, another owner of the Dare Marina, stated he and his partners work very hard to have a good reputation in the community and have tried to accommodate the wishes of the area residents. He stated they have always been considerate to the neighbors with lighting and staying within appropriate regulations. Regarding the additional parking, Mr. Delany stated an agreement had been made with the County not to install the parking spaces until they were absolutely needed.

Mr. Cason Barco, another owner, stated there was no intention to establish a nightclub at the facility, and he indicated the owners would be available after the meeting to answer any questions the area residents might have of them.

Mr. Burgett noted the Board had heard that there had been loud music at the marina.

Mr. Barco explained that the marina has an annual party which was held a couple of weeks ago. He stated the band was scheduled to play from 2:00 p.m. until 6:00 p.m. After there was a complaint, the band was stopped at 5:00 p.m. He also stated there were no plans for live music or a dance floor in the expanded facility.

Miss Rapp asked if the marina had a current public address system.

Mr. Barco stated they had one, but because of complaints they stopped using it years ago and now use two-way radios.

Miss Rapp asked if there was a bar proposed inside the eating area.

Mr. Barco stated it would be difficult to have an eating facility without an ABC license.

Mr. Gordon Lohr, representing the Association for the Preservation of Antiquities, stated he was asked to see how the adjacent historic site might be impacted by the proposed development. He stated he felt the Smith Marine Railway was an historic site for the region, and was one of the most original marine businesses he has ever seen. He indicated there was tremendous historic potential because of the Civil War aspects. Mr. Lohr asked the Board to consider the impact of the development on this site before doing anything. He indicated that after listening to Mr. Carter's presentation, he felt the necessary restraints were in place to deal with the impacts.

Captain Bob James, 306 Mastin Avenue, stated he lives on the water and enjoys it, and he spends his money in York County whenever possible. He stated when he is on his boat he must go to Hampton or Gloucester to get something to eat. Captain James indicated the owners run a first-class operation over the previous owners, and the marina was trying to be environmentally conscious. The marina provides a service to the boaters of this area, and the marina patrons need a place where they can get something to eat.

Mr. Rusty Woods, 79 Saybrooke, Newport News, stated he felt an eating facility was a necessity at Dare Marina. All the other marinas are putting in eating facilities, and the Dare Marina is a nice family-oriented marina. Mr. Woods stated he felt the area residents had been misinformed, and that the homes around full-service marinas have higher property values.

Ms. Ann Copland, 226 Rich Road, expressed her concerns about the traffic impact and environmental issues concerning the proposal. She stated traffic has increased over the years, and delivery trucks and tractor trailers are a nuisance on the small road. The increase in traffic counts because of the eating facility will be a problem to many other neighbors in the area. She stated the eating facility is not a small snack shop, and she urged the Board to give this aspect great consideration. Ms. Copland indicated she was very impressed with Mr. Carter's presentation and the staff's effort to comply with the Chesapeake Bay ordinance. She asked that the Board not support waivers to the County ordinances.

Ms. Anne Blanton, 528 Sparrer Road, stated she lives across the creek from the marina, and the water accentuates the noise, and the noise from the marina was not pleasant. She urged the Board not to approve the 100-seat restaurant so that she won't have to remain shut up in her home in order to have some peace and quiet. She stated the marina was diminishing the neighbors' quality of life and property values.

Ms. Myra McCain, 415 Sparrer Road, stated her field of expertise was commercial real estate, and she had written a detailed zoning opinion which she sent to the Board last week. She requested that the Board read the purpose of the Zoning Ordinance before coming to a decision on this issue. The existing operation of Dare Marina is contrary to the purpose of the County's ordinance, and it disrupts the lives of the neighboring residents daily and should not be expanded. Ms. McCain stated the ownership violates the County's noise ordinance often, and there is pollution on the shoreline. If site plan approval is granted for the new building, there will be no control over what goes on in it.

Mr. Sam Sparrer, 516 Sparrer Road, stated he also lives across the creek from the marina, and he was opposed to any expansion. He indicated he felt his quality of life would not be enhanced by the expansion, and he felt it was out of character with the area. Mr. Sparrer spoke of problems being experienced by boat wake, and he asked the Board not to allow the expansion.

Mr. Burgett asked Mr. Sparrer if he had talked to the owners of the marina and voiced his concerns.

Mr. Sparrer stated he had not.

Mr. Gary Woods, 796 Darden Drive, Newport News, stated he has a boat at Dare Marina, and he felt it was a first-class operation. The employees are outstanding, and the owners provide employment opportunities for teenagers. He acknowledged that the recent party at the marina produced noise, but that was only one day out of 365. Mr. Woods stated the marina takes good care of its patrons, and he looked forward to bringing his family to the marina when the eating facility was open.

Mr. Emmitt Short, 107 Lake Point Place, stated he visits Dare Marina once a day in the evening, and he has not heard any ridiculous noise except the day of the annual party. He stated some people who have children live on their boats at the marina. He indicated the true problem came from the boaters who are not moored at the marina who run up and down the creek all day long. Mr. Short also noted he would like a place to eat at the marina so he did not have to leave it to get something to eat.

Mr. Richard Atlee, 720 Railway Road, stated the eating facility was a restaurant, no matter what the staff wanted to call it, and he felt it was not a permitted use in the WCI district. He expressed his opposition to the project because of that and the traffic and noise issues. He stated the facility was designed to be a public facility, yet the ordinance intended it to serve only the patrons of the marina.

Mrs. Counts, 519 Sparrer Road, expressed her strong objection to the expansion proposal. She stated since the marina was built, she has lost 4 ½ feet of land around her property. She stated the noise comes from more than one party a year, and the language used by the individual who answered the marina telephone when she called to lodge a complaint was not acceptable. Mrs. Counts noted she cannot sit on her porch because of the noise, and she stated her property assessment has gone down because of the damage to the property.

Mr. Tim Smith, 810 Railway Road, indicated he felt the staff of the marina at this time is first-class. Over the past years the residents have had to deal with a lot of issues. The lighting was upgraded on the docks two years ago, and there is now a lighting pollution problem. He stated there is no signal on the gates at the marina, and kids who have been drinking hang out there, but that situation has improved. Mr. Smith stated these issues have affected the quality of life of the residents.

Mr. Burgett asked Mr. Smith if he had made his complaints known to the owners, and they had done nothing about them.

Mr. Smith stated he went to the County concerning the lighting complaint, but nothing has been done. He once called the marina manager concerning a wake problem, but he was vis-

ited the next night by some people which precipitated his calling the Sheriff's Office, and a report has been filed on several other occurrences of such behavior.

Mr. Barrett Nicks, 201 Boathouse Cove, stated he did not want a restaurant in his neighborhood because of the traffic. He stated his family likes to ride bikes, and he feels it is his right to have a quiet neighborhood. He stated restaurants should be on Route 17 where empty stores are located.

Mr. Jerry Nichols, 505 Sparrer Road, expressed his opposition to the expansion proposal, stating he feels the project will be detrimental to property values. He stated he was glad to hear about some of the restrictions that staff would require if the project were allowed. He indicated he did not hear Mr. Carter mention the water being a buffer, but he felt it was a lesser buffer. Mr. Nichols also expressed his concern regarding the holding of private parties at the marina with bands and DJs. He also stated he was concerned that once constructed, the use would change from what had been presented.

Captain John Hanna, 102 Harbor Crescent, stated he lived across from the Seaford Yacht club and down the creek from Back Creek Park, and none of these facilities were offensive to him. He stated it was not the facility that was offensive, but the people who operate the boats. Captain Hanna noted the people of York County are ready for a facility such as that proposed because it is a growing county.

Mr. Michael Hanna, 6 Freemoor Drive, Poquoson, manager of the Dare Marina, indicated the complaints he had heard this evening were new to him with the exception of the party noise and one complaint about the lighting. With regard to the lighting complaint from a neighbor, he indicated the light fixture was spray painted on the neighbor's side so that it would not shine toward his property. Mr. Hanna stated he would do everything he could to work with the neighbors concerning their problems if they would give him a call.

Mr. Ken Shaw, 821 Railway Road, stated he lived at Dare Marina, and most of the people coming in the marina are going slow. He stated it was the other people living on the creek or going through the creek who cause the problems. He stated there have been a few parties at the marina, but he did not feel the music had been abusive. Mr. Shaw noted the management team at the marina was great, and they always fix problems that are identified to them. The owners have always been cooperative and neighbor-oriented.

Mr. Seth Blanton, 528 Sparrer Road, stated he enjoyed having a good time, but he didn't want a place that was noisy located next to his home. Outdoor seating from a restaurant facilitates noise. He spoke about the number of people who have to use the restaurant in order to make it a going concern, and he asked if the number of people using the marina would justify such a facility. Mr. Blanton stated he was opposed to the proposal.

Mr. Carl Barrs, 833 Railway Road, spoke in favor of the marina proposal for expansion, stating all of the objections were coming from Seaford. He stated he has never had to make a complaint about the noise or activity at the marina, and he has known Mr. Barco for many years and knows how he operates. Mr. Barrs stated that traffic would not be a problem, and parents should not let their children play in the streets. He also stated that Mrs. McClain did not live in York County but in Washington, D.C.

Mr. Jimmy Pollard, 231 Robanna Shores Drive, spoke regarding the pollution of the creek, stating there is some erosion, and the mud in the oysters came from the fly ash. He stated he did

not hear noise from the marina, and he agreed that the citizens needed to keep their money in the County.

Mr. Ken Hespe, 711 Ship Point Road, stated the area was a waterfront community, and he was surprised that the community didn't have a waterfront eating facility with access by boat. York County is making significant improvements and growing at a fast rate. The Ship Point area is a new development area, and Mr. Hespe stated he could relate to the people across the creek not wanting their privacy interrupted because of new development. He asked if this expansion was not approved that the County not approve the residential expansion in Ship Point.

Miss Elaina Nunn, 801 Railway Road, stated her grandparents were the owners of Smith Marine Railway. She stated when the marina has parties it disturbed her pets and hurt her ears. She stated the marina and its patrons should not be allowed to be loud.

Mr. James Smith, 609 Railway Road, stated he had nothing against the marina, but his concern was the traffic issue. He stated cars already travel at high speeds in a 25-MPH zone, and no one lets their children play in the street. He stated the residents should be able to ride their bicycles and walk their dogs without being afraid of being run over. Mr. Smith stated there is no way the current road can handle the traffic.

Chairman Zaremba thanked everyone for coming out and voicing their concerns and interest regarding the proposed expansion to the Dare Marina. He stated the issue was whether or not the facility will be used only by patrons and guests of the marina. He asked Mr. Barnett if there were any alternatives for the side that doesn't receive a favorable decision.

Mr. Barnett stated if the Zoning Administrator decides against the site plan, then the owners of the marina have recourse by challenging the decision in Circuit Court. If there are some variances needed that are a matter of zoning law, then the Board of Zoning/Subdivision Appeals might be the route for the owners to appeal. Mr. Barnett stated an interesting question would be whether or not a member of the public would have the right to appeal. As a general matter, someone can appeal if they are aggrieved by the decision which would mean they would have a direct interest in the property being developed.

Meeting Recessed. At 8:43 p.m., Chairman Zaremba declared a short recess.

Meeting Reconvened. At 8:55 p.m., the meeting was reconvened in open session by order of the Chair.

WATER/SEWER STANDARDS AND RATES—REVIEW OF PROPOSED CHANGES

Mr. Stuck indicated that each year staff performs a complete review of the water/sewer regulations and ordinances. In addition, they also look at the rate structures. Mr. Stuck stated that no changes were being recommended to the regulations or fees this year. At Mr. Burgett's request, he then provided the Board members with a brief review of how the connection fees were established.

November 15, 2000

Mr. James O. McReynolds, Director of Financial and Management Services, then explained the process for the establishment of the bi-monthly utility rates in the County which included garbage and water rates as well as sewer.

LEGISLATIVE PROGRAM FOR 2001

Mr. Barnett reviewed the final draft legislative program which had been constructed in two parts, a Summary of Legislation Requested by the County and a Summary of Legislative Policies.

After a brief discussion concerning the chances of York County's requests being acted on by the General Assembly, the Board approved the items as reviewed by Mr. Barnett to be considered as a part of the 2001 Legislative Program for York County which was on the Board's agenda for adoption on November 21.

POLICY FOR BOARD DONATIONS

Mr. Stuck indicated this item was placed on the agenda at the request of the Board. He noted the current practice concerning Board donations was outlined in his memorandum.

Mrs. Noll stated she felt the Board needed to be consistent with its handling of the small amount of funds contained in its budget for this purpose. There are some donations that are best handled by the School Board and some that are best handled by the Board of Supervisors. She stated she did not care how it was done, but she wanted something that outlined criteria that would be applied consistently to all requests.

Mr. Burgett stated he felt it was interesting that with a \$69 million budget, the Board of Supervisors was discussing how to manage \$2,000.

Mrs. Noll stated she felt there needed to be some clear-cut policy for making donations from these funds.

Discussion followed concerning possible donation criteria.

Mr. Burgett indicated it was not a regular occurrence and hadn't been a problem thus far.

No action was taken by the Board at this time.

Meeting Recessed. At 9:51 p.m. Chairman Zaremba declared a short recess.

Meeting Reconvened. At 9:55 p.m. the meeting was reconvened in open session by order of the Chair.

BUDGET HISTORY BRIEFING—PUBLIC SAFETY

Mr. McReynolds made a presentation concerning a comparison of FY1989 through FY2000 regarding General Fund expenditures per capita which indicated that funding for Public Safety had risen 64.4 percent. He then displayed a breakdown of the dollars spent on public safety

showing the source of funding is 83.3 percent local taxes and 16.7 percent state taxes. Mr. McReynolds reviewed the activities included under the Public Safety budgets for the Sheriff's Office and the Department of Fire and Life Safety. He discussed the changes since 1989 that have driven the rise in funding and expenditures.

Mr. Burgett asked if the State paid the County anything for taking State Police 911 calls.

Mr. McReynolds stated there was a state fund from which staff receives some additional funding.

Discussion followed on the increase in 911 calls and increases in activities of the Sheriff's Office.

Mr. Stuck noted that 70 percent of the County budget was in three areas: education, public safety, and debt.

CLOSED MEETING. At 10:08 p.m. Mr. Burgett moved that the Board convene in Closed Meeting pursuant to Section 2.1-344(a)(1) of the Code of Virginia for the purpose of discussing a personnel matter regarding the performance of a County employee.

On roll call the vote was:

Yea: (5) Noll, Wiggins, Burgett, Rapp, Zarembo
Nay: (0)

Meeting Reconvened. At 11:54 p.m. the meeting was reconvened in open session by order of the Chair.

Mrs. Noll moved the adoption of Resolution SR-1 that reads:

A RESOLUTION TO CERTIFY COMPLIANCE WITH THE FREEDOM
OF INFORMATION ACT REGARDING MEETING IN CLOSED
SESSION

WHEREAS, the York County Board of Supervisors has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the York County Board of Supervisors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED by the York County Board of Supervisors this the 15th day of November, 2000, hereby certifies that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed, or considered by the York County Board of Supervisors.

November 15, 2000

On roll call the vote was:

Yea: (5) Wiggins, Burgett, Rapp, Noll, Zaremba

Nay: (0)

Meeting Adjourned. At 11:55 p.m. Chairman Zaremba declared the meeting adjourned sine die.

Daniel M. Stuck, Clerk
York County Board of Supervisors

Walter C. Zaremba, Chairman
York County Board of Supervisors